

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN W. GREEL,
Petitioner,
v.
MICHAEL MARTEL, Warden,
Respondent.

No. 08-04474 CW

ORDER DENYING
MOTION FOR
CERTIFICATE OF
APPEALABILITY ON
INSUFFICIENCY OF
EVIDENCE CLAIM
(Docket # 24)

On July 23, 2010, the Court issued an Order Denying Petition for Writ of Habeas Corpus. In the conclusion of the Order, the Court indicated that it granted a certificate of appealability on two of Petitioner's three claims. See July 23, 2010 Order at 14-15.

On August 19, 2010, Petitioner filed a notice of appeal and a motion for a certificate of appealability on his claim for insufficiency of the evidence supporting his conviction for kidnapping, the claim for which the Court did not grant a certificate of appealability. Petitioner argues that reasonable jurists could disagree on whether driving a car at five miles an hour several hundred feet over a bridge when the victim escaped by jumping out the car window was only incidental to the rape because it did not increase the risk of harm to the victim or decrease his risk of detection. In the July 23, 2010 Order, the Court held that

1 the state court's denial of this claim was not contrary to or an
2 unreasonable application of Supreme Court authority because "a
3 reasonable jury could have found that Petitioner's forced movement
4 of the victim, while not far in distance, was not merely incidental
5 to the rape because it substantially increased the risk of injury
6 to the victim." July 23, Order at 9. The Court finds that
7 Petitioner has not made a sufficient showing of the denial of a
8 constitutional right to justify a certificate of appealability on
9 this claim. Therefore, his motion for a certificate of
10 appealability on this claim is denied.

11
12 IT IS SO ORDERED.

13
14 Dated: August 30, 2010

Claudia Wilken

CLAUDIA WILKEN
United States District Judge